



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/148961

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 2013, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability, now known as the Office of the Inspector General (OIG), in regard to Medical Assistance (MA), a hearing was held on June 06, 2013, at Waukesha, Wisconsin. The record was held open to allow the OIG an opportunity to review additional information submitted by the petitioner at hearing. The OIG provided its response on June 17, 2013 indicating it would not change its original decision to modify the prior authorization request.

The issue for determination is whether the OIG correctly modified the number of personal care worker (PCW) hours for petitioner pursuant to her prior authorization (PA) request.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

John Sage
Schober Schober & Mitchell SC
2835 S Moorland Rd
New Berlin WI 53151-3743

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: written submittal of Sharon Bailey, RN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County. She is 74 years old and certified for MA.
2. Petitioner lives with her daughter and does not regularly attend activities outside of her home. She is diagnosed with Major Depression.
3. On September 12, 2012 a Personal Care Screening Tool (PCST) was conducted by a nurse from Freedom Home Healthcare, LLC for petitioner. The amount of time allocated under the PCST was 105 units (26.25 hours) per week. That PCST showed that:
 - a. She bathes herself with constant supervision and physical intervention to ensure task completion.
 - b. She dresses her upper and lower body with constant supervision and physical intervention to ensure task completion twice daily.
 - c. She requires partial assistance with grooming twice daily.
 - d. She feeds herself but requires intermittent supervision or cueing during her three meals daily.
 - e. For mobility it states that she is able to move about by herself with constant supervision and physical intervention to ensure task completion and uses a 4-wheeled walker.
 - f. She was found to toilet herself or provide her own incontinence care with constant supervision and physical intervention to ensure task completion three times daily. She is also found to need physical help from another to use the toilet and/or change personal hygiene product twice daily.
 - g. For transfers, it states that she can transfer herself but requires intermittent supervision or cueing.
 - h. For medication management, petitioner was found to need the physical help of another twice daily to ensure task completion.
 - i. No behaviors or medical conditions were noted as interfering with the PCW's assistance with cares.
 - j. Freedom Home Healthcare also requested additional time for services incidental to task.
4. On September 24, 2012, Freedom Home Healthcare requested prior authorization on petitioner's behalf for 26.25 hours/105 units per week of PCW services (PA # [REDACTED]) to begin September 16, 2012. That request was approved.
5. On March 7, 2013 the OIG received an amendment request for PA # [REDACTED] for 42 units of PCW travel time to start February 22, 2013.
6. By a notice dated April 9, 2013, the OIG modified the original requested hours for PCW services and granted 7 hours/28 units of PCW services only. No PCW travel time was allowed.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the

number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the OIG’s reviewer can then adjust to account for variables missing from the screening tool’s calculations.

The OIG modified the PA after a departmental review of the PA Amendment Request. The OIG’s position was that the PCST shows that petitioner has major depression and requires cueing and supervision to initiate tasks, but that there was no documentation to show that she had any physical deficits that prevented her from completing tasks independently. The OIG reviewed a Long Term Care Functional Screen (LTCFS) completed for petitioner as part of her IRIS enrollment. Both the LTCFS and the PCST show that petitioner requires prompts or cueing to complete tasks, but that she is independent in completing the tasks. The OIG cites the MA policy which states,

"Constant supervision" of a PC service is reserved for members who cannot perform the activity without continuous direction from a PCW *and* if the PCW physically intervenes to ensure the member performs the activity safely. The PCW must be actively involved in *directing* the member during the execution of the activity *and physically participate* in one or more steps of the activity the member is performing. Watching the member executing the task by himself or herself without physical intervention is not "constant supervision."

See Prior Authorization : Personal Care Screening Tool, available at <https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=47&s=3&c=565&nt=Parameters+for+Making+Selections>.

Thus, because the PCST and the LTCFS showed that petitioner requires only cueing to complete tasks, and that she is independent in completing the tasks, the OIG found the need for constant supervision was incorrectly indicated on the PCST. However, because petitioner was noted to need assistance with getting in and out of the tub, 7 hours weekly was allowed for assistance with bathing.

The problem with petitioner's case largely stems from the Screening Tool as filled out by the provider and its corroboration with the LTCFS. In reviewing the information submitted by the provider, I can see how the OIG was unable to determine that the PCW services were medically necessary, and technically I am reviewing the OIG's determination. In making this decision I note that the petitioner likely requires some PCW services, however, I must base my decision on the law and the evidence before me. I suggest that the petitioner, her provider, and the medical specialists she sees review her PCW needs and that they provide increased documentation to support a new request for additional ongoing PCW time.

The petitioner was represented at hearing by her daughter/caregiver who clearly wants the best for her mother. She described her mother's conditions/abilities are largely affected by her depression. She described that when her mother has "bad days" her mother will not do anything on her own and requires assistance with all activities of daily living (ADLs). She described this as happening about 60% of the time. She also verified that her mother has vertigo and this will impact her need for assistance with walking. She described her mother's "good days" as days when her mother can do most everything by herself, which accounted for about 20% of the time. She also described the "in-between days" which accounted for about 20% of the time, when her mother would need encouragement to complete ADLs, but would still need her to assist with getting in/out of tub, getting on/off the toilet, and getting dressed if she had buckles or buttons. The daughter then went on to explain that she *always* helps her mother with bathing, toileting, cleaning, cooking, medication management, transferring, and mobility. She also cited to her mother's back pain and cataracts as also complicating petitioner's abilities to complete ADLs. The evidence is unclear as to the amount of specific times needed for each task, varies as to what activities require assistance per the testimony, and what assistance is provided.

I therefore must conclude that the OIG was correct in its modification of the PA. As in all prior authorization request cases, the petitioner bears the burden of proving the services she requests are necessary, and that has not been done. Freedom Home Healthcare may be able to file another amendment to the prior authorization request correcting the problems and explaining more fully the need for the hours. An estimated time schedule provided by petitioner's daughter could help in showing the OIG the hours needed, what specific ADLs require assistance and what specific assistance is provided, and what limitations petitioner experiences that require assistance. It looks like requesting Pro Re Nata (PRN) time may be the best way to account for the needs here. I have the option of ordering hours per week here, but I would be totally guessing, as it is not clear to me what is needed. Furthermore, even if I ordered more hours, petitioner's family would have to fight this battle again the next time that prior authorization would be requested, since the OIG still would be looking at the Screening Tool as it was drafted.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The OIG correctly modified petitioner's request for PCW hours as the preponderance of the evidence submitted did not show the medical necessity of the services.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

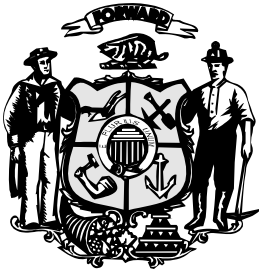
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400. The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of July, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 9, 2013.

Division of Health Care Access And Accountability
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